

### To Be Completed by the Transferee/Buyer Required to Withhold

## General Instructions

**FORM N-288**

## Forms N-288A Must Be Attached

Anyone who completes Form N-288 must also complete a Form N-288A, Statement of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests, for each nonresident transferor/seller subject to withholding.

If two or more nonresident transferors/sellers jointly transfer a Hawaii real property interest, prepare a separate Form N-288A for each nonresident transferor/seller. One Form N-288A should be filed for a husband and wife if they will be filing a joint return for the year in which they transferred their Hawaii real property interest. Copy A must be attached to Form N-288. Copy B must be sent to the transferor/seller. Copy C is for your records. To receive credit for the amount withheld, the transferor/seller must file a Hawaii income tax return (Form N-15 or N-30).

## Penalties

In addition to the penalties provided under section 231-36, HRS, for false and fraudulent statements, if a person is required but fails to withhold tax under section 235-68, HRS, that person is made liable for the tax.

## Definitions

**Nonresident person** means every person other than a resident person.

**Property or real property** has the meaning as the same term is defined in section 231-1, HRS.

**Resident person** means any individual included in the definition of "resident" in section 235-1, HRS; any corporation incorporated or granted a certificate of authority under Chapter 415, 415A, or 415B, HRS; any partnership formed or registered under Chapter 425 or 425D, HRS; any foreign partnership qualified to transact business pursuant to Chapter 425 or 425D, HRS; or any trust included in the definition of "resident trust" in section 235-1, HRS; or any estate included in the definition of "resident estate" in section 235-1, HRS.

**Transferee/Buyer** means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

**Transferor/Seller** means any person disposing real property which is located in Hawaii.

**Amount realized** means the sum of the cash paid, or to be paid (not including interest or original

issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee/buyer or to which the Hawaii real property interest is subject to immediately before and after the transfer. Generally, the amount realized, for purposes of this withholding, is the sales or contract price.

**Date of transfer** means the first date on which consideration is paid or a liability is assumed by the transferee/buyer. Payment of consideration does not include the payment, before the passage of legal or equitable title (other than pursuant to an initial purchase contract), of earnest money, a good-faith deposit, or any similar sum primarily intended to bind the parties to the contract and subject to forfeiture. However, a payment that is not forfeitable may nevertheless be found to constitute earnest money, a good-faith deposit, or a similar sum.

An individual's **Identification number** is the social security number. For any other person, it is the federal employer identification number.

## Exceptions

You are not required to withhold if the transferor/seller furnishes to you Form N-289, Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property, stating that:

- 1) The transferor/seller is a resident person, or
- 2) That by reason of a nonrecognition provision of the Internal Revenue Code as operative under Chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer, or
- 3) For the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000.

If you receive a certification, the withholding tax cannot be collected from you, unless you knew that the certification was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or equivalent fiduciary of a trust or estate.

**Belated notice or false certification.**—If after the date of transfer you receive notice that the certification you received is false, you can rely on the

certification and not withhold on consideration paid before you received the notice. However, you must withhold the full 5% of the amount realized from any consideration that remains to be paid, if possible. You must do so by withholding and paying over the entire amount of each successive payment of consideration until the full 5% has been withheld and paid to the State of Hawaii, Department of Taxation. These amounts must be reported and transmitted to the State of Hawaii, Department of Taxation by the 20th day following the date of each payment.

## Withholding Certificate Issued by the Department of Taxation

A withholding certificate may be issued by the State of Hawaii, Department of Taxation to reduce or eliminate withholding on dispositions of Hawaii real property interests by nonresident persons. The certificate may be issued if 1) the transferor/seller will not realize any gain with respect to the transfer, or 2) there will be insufficient proceeds to pay the withholding required after payment of all costs.

Attach a copy of the approved Form N-288B, Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interests.

## Specific Instructions

**Lines 1.**—Enter the name and identification number (social security number or federal employer identification number) of the transferee/buyer. Enter the home address of an individual or the office address of an entity.

**Lines 2.**—Enter a description of the property including its location and the nature of any substantial improvements, such as an apartment building or warehouse. Include the tax map key number.

**Line 5.**—Enter the amount realized. If the transferor/seller is reporting the gain under the installment method, (i.e., agreement of sales or purchase money mortgages) enter the principal portion of the total payments for the year.

**Line 6.**—Enter the amount withheld. If the amount required to be withheld has been reduced or waived by the Department of Taxation, attach a copy of the approved Form N-288B. Also, if one or more of the transferors/sellers are exempt from the withholding and you are issuing the exempt transferor/seller a Form N-288A, attach a copy of the exempt transferor/seller's Form N-289.